

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Dunn Analyst: Marion Mann DeJong Bill Number: SB 2200

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 5/25/2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Research Expenses Credit/Increase To 17% And 30% Of Excess Expenses/FTB Report Credit Usage On Internet

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced March 20, 2000.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED March 20, 2000 STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would do the following:

?? Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would increase the state research credit for "qualified research expenses" from 12% to 17%.

?? Under the B&CTL, this bill would increase the state research credit for "university basic research" from 24% to 30% of qualified payments.

?? Under the Administration of Franchise and Income Tax Laws (AFITL), this bill would require specified corporate taxpayers that claim the research credit to provide the department with specified information regarding the credit and the taxpayer's employees, their wages, and health benefits. This bill would require the department to publish the information provided by each taxpayer.

SUMMARY OF AMENDMENT

The May 25, 2000, amendment made the following three changes to the reporting requirement provision:

?? Requires the taxpayer to provide its Standard Industrial Classification (SIC) Code;

?? Specifies that the department shall publish the information in an annual report using a unique identifier that does not include the name or the employer identification number of the taxpayer; and

?? Provides that only the increased credit or increased carryover of credit resulting from the increased percentage shall be denied if the taxpayer does not provide the information.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director

Date

Johnnie Lou Rosas

7/18/00

The amendments raised two additional implementation concerns, which are provided below with the unresolved implementation and technical concerns relating to the reporting requirement provision of this bill. Except for the discussion in this analysis, the department's analysis of the bill as introduced March 20, 2000, still applies.

IMPLEMENTATION CONSIDERATIONS

The May 25, 2000, amendments specified that the department shall publish the information in an annual report using a unique identifier that does not include the name or the employer identification number of the taxpayer. The amendments further specified that nothing in this section shall authorize the department to disclose the name of the employer or identification number of any taxpayer. However, the bill's original language still provides that the department must publish the corporate name in the annual report. The two sections of the bill contradict. The bill cannot be administered with this conflict in the language.

The reporting requirement in this bill would be limited to those corporate taxpayers that claim a research credit for the increased amount provided by the bill. This provision could have varying interpretations. One interpretation would be that a corporate taxpayer could avoid being subject to the reporting requirement by claiming a research credit in the amounts authorized by the law in effect before the bill. However, a credit in the reduced amount would no longer be authorized under the code.

Alternatively, since the credit language does not appear to provide taxpayers the option to claim their research credit using a smaller or different amount than that specified in this bill, it could be interpreted that any taxpayer claiming the credit must both claim the increased amount and must comply with the reporting requirement. The bill should be amended to clarify the author's intent on this issue.

The bill specifies that a taxpayer provide its SIC Code, but it is possible for a taxpayer to have multiple SIC Codes. Thus, it is unclear whether a taxpayer is required to provide only its primary SIC Code, or whether a taxpayer should provide each SIC Code under which its business activities are classified.

TECHNICAL CONSIDERATIONS

The reporting requirement would apply only to taxpayers subject to the B&CTL. Accordingly, unless the bill is intended to also impose the reporting requirement on non-corporate taxpayers, it is unnecessary to reference the research credit under the Personal Income Tax Law. The attached amendments would delete those references.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 2200
As Amended May 25, 2000

AMENDMENT 1

On page 5, line 36, ~~Sections 17052.12 and~~ and insert:

Section

AMENDMENT 2

On page 6, line 11, ~~17052.12 or~~.

AMENDMENT 3

On page 6, line 22, ~~Sections 17052.12 and~~ and insert:

Section